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Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 CAB-02 CIAE-00 COME-00
DODE-00 DOTE-00 EB-07 INR-07 NSAE-00 EPG-02
FAA-00 EPA-01 SSO-00 NSCE-00 USIE-00 INRE-00
PM-04 H-01 L-03 NSC-05 PA-01 PRS-01 SP-02 SS-15
TRSE-00 OMB-01 /065 W
----------271716Z 085476 /43
O 271643Z MAY 77
FM AMEMBASSY PARIS
TO SECSTATE WASHDC IMMEDIATE 3275
INFO AMEMBASSY LONDON IMMEDIATE
FAA BRUSSELS IMMEDIATE

C O N F I D E N T I A L SECTION 01 OF 02 PARIS 15756

E.O. 11652 GDS
TAGS: EAIR, UK, US
SUJ: FOREIGN MINISTRY DEMARCHE ON CONCORDE

1. SUMMARY: FOREIGN MINISTRY CALLED US IN MAY 27 FOR "HIGH LEVEL DEMARCHE" ON CONCORDE. SERIOUS CONCERN WAS EXPRESSED OVER EFFECT ON FRANCO-AMERICAN RELATIONS SHOULD DIFFERENCES OVER INTERPRETATION OF LEGAL ARGUMENTS PROMPT USG TO SUBMIT BRIEFS THAT WOULD CONTRIBUTE TO AN UNFAVORABLE DECISION BY NEW YORK COURT OF APPEALS. AS RESULT OF APPEALS COURT REQUEST PROBLEM WAS NOW MORE POLITICAL THAN LEGAL IN RELATIONS BETWEEN OUR GOVERNMENTS. FRENCH AND BRITISH AMBASSADORS WASHINGTON ARE TO MAKE SIMILAR DEMARCHES THERE. EMBASSY WOULD APPRECIATE DETAILS ON APPEALS COURT REQUEST TO STATE AND DOT. END SUMMARY.

2. CUVILLIER OF FOREIGN MINISTRY ASKED CAA, IN ABSENCE MINECON, TO CALL AT MINISTRY LATE
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MORNING MAY 27 ON SUBJECT OF CONCORDE. ALSO PRESENT WITH CUVILLIER WERE CLAUDE-LAFONTAINE, HIS ASSISTANT FOR CIVAIR MATTERS, AND DE LA SABLIERE OF THE MINISTER'S CABINET.

3. CUVILLIER SAID HIS DEMARCHE WAS TO BE CONSIDERED AS "HIGH LEVEL" AND REFLECTED THE

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VERY SERIOUS CONCERN OF THE GOF OVER THE NEW YORK
COURT OF APPEALS' REQUEST TO STATE AND DOT
TO SUBMIT BY JUNE 1 BRIEFS ADDRESSING THE QUESTIONS
OF INTERNATIONAL OBLIGATIONS AND THE PRE-EMPTIVE
NATURE OF THE COLEMAN DECISION RESPECTIVELY AS THEY
MIGHT APPLY TO A TEST PERIOD FOR CONCORDE SERVICE
AT NEW YORK. CUVILLIER RECALLED THAT THE USG
HAD DISAGREED WITH THE FRENCH/BRITISH THESIS AS
CONCERNS THE LEGAL ARGUMENTATION SUPPORTING
CONCORDE'S RIGHT TO LAND AT NEW YORK AND WE WERE
ALSO AWARE OF FRENCH/BRITISH DISAPPOINTMENT THAT
WE HAD REFUSED TO ENTER THE DISTRICT COURT SUIT
AS A FRIEND OF THE COURT. HOWEVER, JUDGE POLLACK
HAD SINCE HANDED DOWN HIS JUDGMENT IN THE DISTRICT
COURT AND HAD RULED THAT THE LEGAL ARGUMENTS STEMMING
FROM INTERNATIONAL OBLIGATIONS WERE NOT RELEVANT
TO CONCORDE OPERATION TO NEW YORK FOR A TRIAL
PERIOD.

4. A RECENT DEVELOPMENT THAT HAD HEIGHTENED GOF
WORRY OVER THE IMPLICATIONS OF THE APPEALS COURT
REQUEST WAS THE US STATEMENT ON CONCORDE MADE DURING
THE US-UK NEGOTIATIONS (STATE 90254). THE GOF
CONTENDED THAT UNDER THE US-FRANCE BILATERAL (AND
THE BERMUDA AGREEMENT) IT WAS NOT PERMISSIBLE FOR
CONCORDE TO BE BANNED FROM NEW YORK, AND ALL THE
MORE SO FOR FLIGHTS DURING A TEST PERIOD. HOWEVER,
THE US STATEMENT IMPLIES THAT CONCORDE IS "UNABLE
TO COMPLY WITH...DOMESTIC LAWS AND REGULATIONS",
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WHICH SEEMS TO PREJUDGE THE RESULTS OF THE TEST
PERIOD. THE GOF FINDS SUCH A STATEMENT "VERY
SURPRISING."

5. SITUATION WITH WHICH WE ARE FACED TODAY,
CONTINUED CUVILLIER, IS NO LONGER MRELY ONE OF
LEGAL INTERPRETATION. THIS HAD BEEN THE CASE
SO LONG AS THE LEGAL QUESTIONS HAD BEEN LEFT TO
THE DISCRETION OF THE DISTRICT COURT TO WEIGH.
BUT APPEALS COURT'S REQUESTS
TO US FEDERAL GOVERNMENT FOR ITS VIEWS HAD
NOW TRANSPOSED PROBLEM TO THE POLITICAL LEVEL,
AND IT WAS A POLITICAL DEMARCHE, CUVILLIER STRESSED,
THAT THE MINISTRY WAS ACCORDINGLY MAKING TO
US TODAY. IN THE ABOVE-MENTIONED STATEMENT ON
CONCORDE TO THE UK DELEGATION IN THE BERMUDA
TALKS, THE US HAD STATED THAT IT HAD REFRAINED FROM
INTERVENING IN THE DISTRICT COURT SUIT BECAUSE
IT CONSIDERED THIS TO BE "IN THE BEST INTEREST" OF

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US FOREIGN RELATIONS. THE GOF, CUVILLIER WAS

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----------271715Z 085713 /43
O 271643Z MAY 77
FM AMEMBASSY PARIS
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INFO AMEMBASSY LONDON IMMEDIATE
FAA BRUSSELS IMMEDIATE

C O N F I D E N T I A L SECTION 02 OF 02 PARIS 15756

CAREFUL TO POINT OUT, WAS TODAY NOT ASKING THE
USG TO ALTER ITS POSITION ON THE LEGAL GROUNDS.
HOWEVER, THE GOF DID WISH TO POINT OUT TO US
IN MOST SOLEMN FASHION HOW DETRIMENTAL IT WOULD
BE TO FRANCO-AMERICAN RELATIONS SHOULD THE
APPEALS COURT BE INFLUENCED IN AN UNFAVORABLE
DIRECTION BY THE VIEWS OF A DEPARTMENT
OF THE US FEDERAL GOVERNMENT. DESPITE REFUSAL
OF THE FEDERAL GOVERNMENT TO INTERVENE IN
THE CONCORDE LAWSUIT EARLIER THE GOF HAD TAKEN
PAINS TO PROFESS UNDERSTANDING FOR THE FEDERAL
GOVERNMENT'S POSITION AND TO REFRAIN FROM ANY
PUBLIC CRITICISM.

6. SPECULATING ON WHAT THE USG RESPONSE MIGHT BE
TO THE APPEALS COURT--WHICH HE STRESSED WAS OF
COURSE UP TO US ALONE TO DECIDE--CUVILLIER NOTED
THE USG MIGHT, FOR EXAMPLE, REFUSE TO RESPOND
ON THE GROUNDS THAT THE ISSUES ON WHICH THE
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FEDERAL GOVERNMENT'S VIEWS WERE SOUGHT WERE NOT RELEVANT. OR THE USG MIGHT RESPOND THAT IT COULD NOT ANSWER BY JUNE 1 BECAUSE IT NEEDED MORE TIME TO STUDY THE QUESTION. (BREAKING THE STRING OF WHAT HAD SET OUT TO BE A SERIES OF RHETORICAL QUESTIONS, CUVILLIER REMARKED THAT A REQUEST FOR DELAY ON THESE GROUNDS WOULD HARDLY BE CREDIBLE AND, HE WARNED, THE GOF WOULD BE MOST DISPLEASED AT ANY SUCH ACTION THAT COULD DELAY THE APPEALS COURT DECISION.) OR, HE WONDERED, MIGHT THE USG RESPOND TO THE APPEALS COURT IN A MANNER FINESSING THE DIFFERENCES BETWEEN US OVER THE LEGAL ISSUES?

7. GOF, CUVILLIER REITERATED, WAS NOW ASKING USG TO VIEW THE PROBLEM NOT IN NARROW LEGAL TERMS BUT IN POLITICAL TERMS. JUDGE POLLACK HAD SET ASIDE INTERNATIONAL OBLIGATIONS AS IRRELEVANT AND HAD RULED THAT IT WAS ONLY FAIR THAT CONCORDE BE PERMITTED AT NEW YORK THE TEST PERIOD WHICH SECRETARY COLEMAN HAD AUTHORIZED. THIS HAD SPARED THE FRENCH AND THE BRITISH FROM HAVING TO EXPOUND FURTHER ON THE QUESTION OF INTERNATIONAL OBLIGATIONS, WHERE DIFFERENCES OF INTERPRETATION WITH THE USG DID EXIST. THE COLEMAN DECISION DID RAISE THE ALL-IMPORTANT QUESTION OF PRE-EMPTION, BECAUSE OF THE IMPLICATIONS THAT WOULD STEM FROM FAILURE TO PERMIT A TEST PERIOD AT NEW YORK OR TO HONOR THE OP SPECS APPROVED BY FAA. THE GOF CONSIDERS THE COLEMAN DECISION TO CONSTITUTE A COMMITMENT BY THE USG TO PERMIT CONCORDE TO OPERATE TO NEW YORK AS WELL AS TO WASHINGTON, DC FOR A TEST PERIOD. THIS SHOULD BE THE BASIS FOR ANY POSITION TAKEN BY THE USG TODAY. CUVILLIER ASKED THAT THESE VIEWS BE BROUGHT IMMEDIATELY TO THE CONFIDENTIAL

ATTENTION OF STATE AND DOT, AND HE ATTACHED SPECIAL EMPHASIS TO THE POSITION DOT WOULD TAKE.

8. CUVILLIER FURTHER EXPRESSED THE HOPE THAT STATE AND DOT WOULD BE IN CLOSE TOUCH WITH FRENCH AND BRITISH REPS IN WASHINGTON DURING PREPARATION OF STATE AND DOT RESPONSES TO APPEALS

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COURT REQUESTS SO THAT THE FRENCH AND
BRITISH NOT BE CONFRONTED AT NEW YORK WITH ANY
SURPRISES.

9. HE CONCLUDED BY NOTING THAT FRENCH AND
BRITISH AMBASSADORS IN WASHINGTON WOULD IMMINENTLY
BE MAKING PARALLEL DEMARCHES ALONG THESE SAME
LINES.

10. WE ASSURED CUVILLIER THAT GOF VIEWS WOULD
BE FULLY AND PROMPTLY REPORTED TO DEPT.

11. DEPT. IS REQUESTED TO PROVIDE US SOONEST
WITH DETAILS ON NATURE OF REQUEST DEPT. AND
DOT HAVE RECEIVED FROM NEW YORK COURT OF APPEALS.
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